

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LA:2:POSTF-140732-02

KHAnkeny

date: August 8, 2002

to: [REDACTED], Manager (LMSB)
[REDACTED], Examiner (LMSB)

from: KATHERINE H. ANKENY, Attorney (LMSB)

subject: **Form 872 Covering a Non-TEFRA Limited Liability Company
that Is Owned by Members of a Consolidated Group**

This memorandum responds to your request for assistance, contained in your April 25, 2002 memorandum and in your July 26, 2002 email. This memorandum should not be cited as precedent.

ISSUES

- (1) Do the TEFRA audit rules apply to [REDACTED] LLC's [REDACTED] tax year?
- (2) Which Form 872 should Examination use to extend the period of limitations for [REDACTED] LLC's [REDACTED] tax year?
- (3) Will the entire consolidated group be bound by any adjustments resulting from the audit of [REDACTED] LLC?

CONCLUSIONS

- (1) The TEFRA audit rules do not apply to [REDACTED] [REDACTED] LLC's [REDACTED] tax year because [REDACTED] LLC was excepted as a small partnership and did not elect to have the TEFRA audit rules apply.
- (2) The existing Form 872 for the [REDACTED] consolidated group will cover any adjustments resulting from the audit of [REDACTED] [REDACTED] LLC's [REDACTED] tax year.
- (3) The entire consolidated group during [REDACTED] will be bound by any adjustments resulting from the audit of [REDACTED] [REDACTED] LLC.

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FACTS

On [REDACTED] [REDACTED] LLC filed its initial Form 1065 for its [REDACTED] tax year, which began [REDACTED] and ended [REDACTED]. On Schedule B, [REDACTED] LLC checked the boxes indicating that it was a limited liability company and was not subject to the TEFRA audit procedures. [REDACTED] LLC had two members: [REDACTED] owned [REDACTED]% and [REDACTED] owned [REDACTED]%. Both members are C corporations. [REDACTED] LLC did not file an election to have the TEFRA audit rules apply. Nor did it file an election to be classified as a corporation.

In response to an information document request, [REDACTED] LLC confirmed that it did not file an election to have the TEFRA audit rules apply. In response to another information document request, it stated that its tax matters partner was [REDACTED]. In response to your recent question, a representative of [REDACTED] stated that [REDACTED] LLC's manager is its [REDACTED]% member, [REDACTED].

[REDACTED] LLC's [REDACTED]% member, [REDACTED], was and still is the parent corporation of a consolidated group. [REDACTED] LLC's [REDACTED]% member, [REDACTED], was a subsidiary included in that consolidated group.

A representative of [REDACTED] signed the consolidated group's Form 872, dated [REDACTED], which extended the period of limitations for the consolidated group's [REDACTED] tax year to [REDACTED]. The TEFRA language now included in the Form 872-I was not typed onto that Form 872.

Examination has confirmed that [REDACTED], [REDACTED], and [REDACTED] LLC still exist and are in good standing.

ANALYSIS

(1) The TEFRA Audit Rules Do Not Apply to [REDACTED] LLC's [REDACTED] Tax Year Because [REDACTED] LLC Was Excepted as a Small Partnership and Did Not Elect to Have the TEFRA Audit Rules Apply.

For its [REDACTED] tax year, [REDACTED] LLC is excepted as a small partnership from the TEFRA audit rules because [REDACTED] LLC had only two members, both of which are C corporations. I.R.C. § 6231(a)(1)(B)(i). [REDACTED]

██████████ LLC did not file an election to have the TEFRA audit rules apply. I.R.C. § 6231(a)(1)(B)(i); Proced. & Admin. Regs. § 301.6231(a)(1)-1(b)(2).

We disregard the statement by the representative of ██████████ that the tax matters partner of ██████████ LLC was ██████████. The representative made that statement in response to an information document request, which asked for the name of ██████████ LLC's "designated TMP." The representative may have been confused by that request. It remains reasonable for the Service to determine that the TEFRA audit rules do not apply based on ██████████'s failure to file a TEFRA election and the statement by the representative of ██████████, confirming that it did not file a TEFRA election. I.R.C. § 6231(g)(2).

(2) The Existing Form 872 for the ██████████ Consolidated Group Extends the Period of Limitations for Any Adjustments Resulting from the Audit of ██████████ LLC's ██████████ Tax Year.

██████████ has ██████████ members, and it did not file an election to be classified as a corporation. Therefore, by default, ██████████ LLC was a partnership in ██████████. Proceed. & Admin. Regs. § 301.7701-3(b)(1)(i).

As a non-TEFRA partnership, ██████████ LLC's tax treatment is determined at the member level. Thus, the period of limitations applying to its members, ██████████ and ██████████, would control any adjustment resulting from the audit of ██████████ LLC. The period of limitations for the consolidated group, including ██████████ and ██████████, has already been extended to ██████████ I.R.C. § 6501(c)(4)(A).

On the consolidated group's Form 872, the parties omitted to type in the TEFRA language now included in the Form 872-I. That omission is irrelevant to any adjustments resulting from the audit of ██████████ LLC. because it is a non-TEFRA partnership. However, we do recommend that Examination use Form 872-I for future extensions of the consolidated group's other tax years.

██████████, as the manager of ██████████ LLC, was not required to be an additional signatory on the consolidated group's Form 872. Instead, ██████████ had the authority to sign the Form 872 on its own behalf and as the agent of each member of the consolidated group, including ██████████. Treas. Reg. § 1.1502-77A(a).

(3) The Entire Consolidated Group Will Be Bound by Any
Adjustments Resulting from the Audit of [REDACTED] LLC.

The consolidated taxable income for the consolidated group takes into account the separate taxable income of each member of the group. Treas. Reg. § 1.1502-11(a)(1). This means that each member in [REDACTED]'s consolidated group during [REDACTED] will be liable for any adjustments resulting from the audit of [REDACTED] LLC's [REDACTED] tax year.

In accordance with CCDM(35)3(19)4, we are giving a copy of this memorandum to the National Office for its review. When we hear from the National Office in about ten days, we will let you know whether the National Office agrees with this memorandum. Please call me (213.894.3027, ext. 155) if you have any questions.

This memorandum may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Area Counsel
(Communications, Technology and
Media: Oakland)

By: _____
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